

Before the
Administrative Hearing Commission
State of Missouri



ADARINE SHAW,)	
)	
Petitioner,)	
)	
vs.)	No. 150019 AF
)	
FELIX VINCENZ,)	
CHIEF OPERATING OFFICER,)	
ST. LOUIS PSYCHIATRIC)	
REHABILITATION CENTER,)	
)	
Respondent.)	

DECISION

We grant Felix Vincenz’s motion to dismiss Adarine Shaw’s application for attorney fees because we lack jurisdiction to hear it.

Procedure

Shaw filed her application for attorney fees and expenses with this Commission on January 8, 2015. Vincenz filed his answer and motion to dismiss the application on February 6, 2015. On February 24, 2015, Shaw filed her response to the motion.

Findings of Fact

1. On August 3, 2012, Shaw filed an appeal with this Commission, challenging her dismissal by Vincenz from her job as a Registered Nurse Senior with the St. Louis Psychiatric Rehabilitation Center (“SLPRC”).

2. On February 21, 2014, we issued our decision in case number 12-1408 PER in Shaw's favor, and Vincenz did not appeal it.

3. On April 3, 2014, having received no notice of appeal, we opened our case number 14-0409 PBP with a Notice of Reinstatement/Backpay Hearing, which remains pending.

Conclusions of Law

Because this Commission was created by state statutes, we have only such authority as the statutes give us.¹ If we have no jurisdiction to hear Shaw's application, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.² Vincenz asks us to dismiss Shaw's application on the ground that we lack jurisdiction because he contends it was untimely filed pursuant to § 536.087.3,³ which provides in relevant part:

A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in an agency proceeding or final judgment in a civil action, submit to the court, agency or commission which rendered the final disposition or judgment an application which shows that the party is a prevailing party and is eligible to receive an award under this section....

Further, Vincenz argues that § 621.075.3 makes clear that our February 21, 2014 decision that Shaw be reinstated was a final agency decision. It provides:

After an order of reinstatement has been issued and all parties have let the time for appeal lapse or have filed an appeal and the appeal process has become final and the order of reinstatement has been affirmed, **the administrative hearing commission shall commence a separate action to determine the date of reinstatement and the amount of back pay owed to the employee...**

(Emphasis added).

¹*State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974).

²*Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).

³ RSMo 2000. Further statutory references, unless otherwise noted, are to the Revised Statutes of Missouri Cumulative Supplement 2013.

On the other hand, Shaw argues that *Lewis v. Bellefontaine Habilitation Ctr.*,⁴ decided by the Court of Appeals in 2003, is controlling and applies in this case. In that case, Lewis appealed her dismissal from state employment to the Personnel Advisory Board (“PAB”) under § 36.390.⁵ The PAB issued a decision in Lewis’ favor on the underlying issue of the propriety of her dismissal; but this decision did not establish a specific dollar amount of back pay. Lewis filed an application for attorney fees and costs with the PAB more than 30 days after the PAB’s decision. The PAB granted Bellefontaine’s motion to dismiss. Lewis sought review of the PAB’s dismissal by a petition for mandamus to the circuit court, which ordered the PAB to consider Lewis’ application for attorney fees and costs. The court of appeals affirmed the circuit court’s order, holding that the failure of the PAB to decide the amount of back pay meant that its decision was not a “final disposition” of the case that would trigger the 30-day deadline to apply for attorney’s fees and costs.⁶

However, in 2010, the General Assembly amended § 36.390 and added a new § 621.075, as part of its transfer of jurisdiction over state employee discipline cases arising under Chapter 36 from the PAB to this Commission. The amendments, contained in 2010 H.B. 1868, became effective on August 28, 2010, well before Shaw’s dismissal in 2012. By that time, § 621.075.3, as amended in 2010, was controlling, and an action for back pay had become a separate action. For all intents and purposes, the holding in *Lewis* that no PAB decision reinstating an employee is final until the amount of back pay is determined was abrogated by § 621.075.3, and the determination of whether cause existed for the discipline imposed became a final agency decision if not timely appealed. In other words, once this Commission has determined that an employee will be reinstated and the parties have let the time for appeal lapse, that determination

⁴ 122 S.W.3d 105 (Mo. App. W.D. 2003).

⁵ RSMo 2000.

⁶ *Lewis*, 122 S.W.3d at 111.

becomes the final disposition of an agency proceeding, and the application for attorney fees and expenses must be filed within thirty days in accordance with § 536.087.3.

Summary

Shaw brought her application for attorney's fees and costs more than 30 days after the final disposition of her case. Accordingly, we lack jurisdiction to consider her application, and grant Vincenz's motion to dismiss.

SO ORDERED on April 21, 2015.

\s\ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner